IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Abdul Rahman & Others Vs. State of Rajasthan & Others
(SB Civil Writ Petition No.5822/1997)

SB Civil Writ Petition under Article
226 of the Constitution of India.

Date of order: October 12, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Ravi Kasliwal, for the petitioners.

Mr. R.P.Kuldeep, Addl.Govt. Advocate for State.
Mr. Sanjay Mehrishi] for the respondents.
Mr. Bhanu Pareek]

BY THE COURT:

This writ petition has been filed by the plaintiffs- petitioners (for short `plaintiffs') impugning the judgment dated May 19, 1997 of Board of Revenue Ajmer (for short `Board'), whereby the second appeal under section 224 of Rajasthan Tenancy Act,1955 (for short `1955 Act') preferred by defendant respondents (for short `defendants') was allowed and the suit of the plaintiffs decreed by Revenue Appellate Authority Kota (for short `RAA') was dismissed.

2. Contextual facts depict that RAA on March 9, 1987 decreed the suit for partition instituted by the plaintiffs and reversed the findings of Assistant Collector. The judgment and decree of RAA were assailed by the defendants before the Board of Revenue by filing second appeal which was allowed by the Board reversing the findings of RAA. The Board held that

the plaintiffs were estopped from filing the second suit since earlier suit for partition had already been dismissed as withdrawn.

3. Mr. Ravi Kasliwal, learned counsel for the plaintiffs vociferously criticised the order of Board and contended that since the earlier suit instituted by plaintiffs was not decided on merits, the principle of resjudicata or estoppal could not have been invoked. Reliance is placed on Smt.Nirmala Vs. Hari Singh (AIR 2001 Himachal Pradesh 1), wherein it was held that the second suit based on different cause of action was maintainable.

4. Having considered the rival submissions and on analysing the material on record, I notice that that the plaintiffs instituted Suit for partition in the year 1962 in the court of Sub Divisional Officer Bundi. On September 22, 1969 the plaintiffs filed application seeking withdrawal of the suit. In the application it was stated that:-

> "उपरोक्त मुकदमे मे हम पक्षकारों के आपस में समझोता हो गया है और अब वादीगण प्रतिवादी के खिलाफ कोई कार्यवाई नहीं कराना चाहते कृपया राजीनामा के अनुसार मुकदमा दाखिल दफतर फरमा दिया जावे।"

Pursuant to the prayer made by the plaintiffs, the SDO Bundi dismissed the suit. It appears that the plaintiffs thereafter filed another suit under sections 53, 54, 88, 89 and 91 of 1955 Act on December 13, 1974, which is the subject matter of this writ petition.

5. At this juncture reference of provisions of Order 23 Rule 1 (3) and (4) of CPC, appears necessary, which read thus:-

(3) Where the Court is satisfied-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1) of

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

(Emphasis Supplied)

6. In the instant case since the plaintiffs did not seek any permission from the court to withdraw the suit under sub rule 3 of Rule 1 of Order 23 CPC, they were precluded from instituting the fresh suit in view of sub rule 4 of Rule 1 of Order 23 CPC. Having carefully analysing the material on record, I notice that both the suits related to the same property and based on one cause of action.

7. Their Lordships of the Supreme Court in Sarguja Transport Service Vs. State Transport Appellate Tribunal Gwalior (AIR 1987 SC 88) indicated as under:-

> "In order to prevent a litigant from abusing the process of the Court by instituting suits again and again in the same cause of action without any good reason the Civil P.C. insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in O.23 R.1(3).

> The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata. This principle underlying R.1 of O.23 should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy. That would also discourage the litigant from indulging in bench hunting tactics...."

8. In Jineshwardas Vs. Jagrani (AIR 2003 SC 4596) the Apex Court observed in para 8 as under:-

> "... That apart we are also of the view that a judgment or decree passed as a result of consensus arrived at before Court, cannot always be said to be one passed on compromise or settlement and adjustment. <u>It may, at times, be also a judgment on admission, as in this case</u>.
>
> (Emphasis supplied)

9. In the ultimate analysis, I do not find it a fit case to invoke Article 227 of the Constitution.

10. For these reasons, the writ petition being devoid of merit stands dismissed without any order as to costs.

(Shiv Kumar Sharma),J.

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